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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,792	07/21/2003	Thomas J. Burke	660041-2002.1	6106
7590 JOANNE M. MARTIN 40 NORTH SPRING STREET CONCORD, NH 03301-3902			EXAMINER REDMAN, JERRY E	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 07/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/623,792	Applicant(s) BURKE, THOMAS J.	
	Examiner Jerry Redman	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The applicant's information disclosure statement dated 9/19/2005 has been considered and a copy has been placed in the file.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 7-15 and in claim 10, lines 15-23, the phraseology is not readily understood by the Examiner. Specifically, the applicant recites a programmable electronic controller responsive to at least one of (a) selective gate operating parameters (exactly what are these?), and (b) a selective electrical signals (what is meant by selective electrical signals?) in response thereto (in response to what?) to said gate means (not clear what is being claimed) to programmably control at least one of (c) a first gate position motion initiation in response to a second gate position (not readily apparent what is meant by first gate position motion initiation and more specifically first gate position motion initiation to a second position), (d) a gate position duration (specifically, what is meant by "gate position duration"?), (e) a communication of diagnostic data, (f) a communication of video data, (g) an initiation of a failure condition, and (h) the reception (specifically, what is meant by reception of data?) of electronic controller programming data.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

As best understood, claims 1-6 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Carr in view of Bertieri et al. Carr discloses a crossing assembly comprising a gate means (15) connectable to a stanchion (14 and 16) and movable between a generally upright position to permit access therethrough, and a controller (38) for controlling the function and operation of the door. Carr fails to disclose a programmable controller using relays and wireless links, which are responsive to the movement of the gate. Bertieri et al. disclose a controller using relays and wireless remote control links to program and operate a movable closure. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the assembly of Carr with a programmable controller as taught by Bertieri et al. since a programmable controller allows one to change and operate the function of a closure from a remote location.

As best understood, claim 7 is further rejected under 35 U.S.C. 103(a) as being unpatentable over Carr and Bertieri et al. as applied to claim 1 above, and further in view of Keeling et al. All of the elements of the instant invention are discussed in detail above except providing a camera. Keeling et al. disclose a camera (38) to monitor the movement of traffic through a gate crossing. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the assembly of Carr with a camera as taught by Keeling et al. since a camera allows one to monitor areas of traffic

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and more particularly, traffic which could be recorded and/or monitored on a real time basis due to terrorists.

As best understood, claims 8 and 9 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Carr and Bertieri et al. as applied to claim 1 above, and further in view of Fox or Loban et al. All of the elements of the instant invention are discussed in detail above except providing lights that are bulletproof. Fox discloses "bulletproof" lights (38, depending on what type of bullet and specifically how the applicant defines "bulletproof", the lights of Fox are durable and rigidly attached). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the gate means of Carr with "bulletproof" lights as taught by Fox since the lights of Fox provide durability in harsh environments as well as providing a signal that extends along the gate means. Loban et al. disclose a "bulletproof" lighting assembly. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the gate means of Carr with a "bulletproof" lighting assembly as taught by Loban et al. since a "bulletproof" lighting assembly provides durability in harsh environments as well as a light system for lighting up the gate means.

Depending on the applicant's amendments, it appears that claims 10-20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

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The applicant's arguments have been considered but are not deemed persuasive. The additional phraseology to claim 1 appears to overcome the double patenting rejection. Depending on the applicant's amendments in the future, a double patenting rejection may be warranted in the future.

The applicant's arguments with respect to the 35 U.S.C. 112 second paragraph rejections have been considered but are not deemed persuasive. No disrespect intended, but the Examiner disagrees with all of the applicant's second paragraph rejections. The Examiner has consulted several Primary Examiner's within the office and all still feel that the second paragraph rejections are warranted.

With respect to the art rejection arguments, it appears that the applicant is arguing the references individually and not the combination thereof. Furthermore, the broadest interpretation of the word "controller" is applied and since the applicant's claims are not readily understood by the Examiner, the word "controller" reads on the applicant's claims and the limitations thereof.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Redman whose telephone number is 571-272-6835. The examiner can normally be reached on M-F from 8 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Glessner, can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jerry Redman
Primary Examiner

Jerry Redman
Primary Examiner
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